

United States Senate  
WASHINGTON, DC 20510

October 20, 2022

The Honorable Antony Blinken  
Secretary  
Department of State  
2201 C Street NW  
Washington, DC 20520

The Honorable Gina Raimondo  
Secretary  
Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

The Honorable Katherine Tai  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Secretary Blinken, Secretary Raimondo, and Ambassador Tai:

We write to you with grave concern over the outsourcing of U.S. competition policy to foreign entities and not only what that holds for the future of American leadership in global markets, but also what it means for American patients. Because of your co-chairmanships of the U.S.-EU Trade and Technology Council (TTC), we request that you formally intervene in a pressing matter of both U.S. sovereignty and the ability to save lives that would otherwise be lost to cancer.

As you are likely aware, last year the Federal Trade Commission (FTC) initiated proceedings to block Illumina from reacquiring its then-former subsidiary GRAIL, maker of the first multi-cancer early detection test, Galleri, which can detect many cancers earlier than ever before. The parties went through the FTC's administrative court, and Illumina and GRAIL ultimately prevailed earlier this month. Days later, in spite of this decision, the European Commission ruled against the merger, putting it in direct conflict with the FTC Chief Administrative Law Judge's (ALJ) ruling, thereby putting the status of this case in a state of uncertainty and further prolonging a seemingly interminable process. As Members of Congress, we simply cannot abide foreign governments effectively negating judicial decisions from U.S. institutions.

While we respect the FTC's decision to bring this action through administrative law channels and the staff's right to appeal the verdict to the commissioners, we reject the premise of allowing European entities to decide the fate of American companies. The situation is especially disconcerting because GRAIL does no business in the EU, and the fates of potentially hundreds of thousands of Americans at risk of cancer hang in the balance.

The European Court of Justice (ECJ) will be considering an appeal of the General Court’s ruling that Europe has jurisdiction to block this transaction. The ECJ case transcends the Illumina/GRAIL merger and impacts all mergers in all U.S. industries. The Biden administration must work to put a stop to this encroachment on American sovereignty and file an intervention with the ECJ. Allowing even friendly countries to exercise functional veto power over our own FTC is bad policy—when that policy delays access to lifesaving cancer diagnoses, it is downright unconscionable.

When testifying before the House Energy and Commerce Committee last year, Commissioner Wilson appropriately noted the FTC’s substantial authority and the importance of having “sufficient guardrails to ensure we are receiving input, that we understand what the evidence is with respect to impacts and possible unintended consequences of our actions.” Allowing the European Commission to essentially supersede the FTC court’s ruling is the very kind of unintended consequence our government must fight back against, especially when juxtaposing an opinion of a foreign regulatory body with an exhaustive administrative trial featuring numerous experts, live witness testimony with cross-examination, and a 200-page ruling that finds, among other things, that “the evidence fails to prove the Acquisition is likely to harm GRAIL’s alleged rivals”.

The FTC retains an ongoing jurisdiction on appeal of the ALJ’s ruling, after which subsequent action would be subject to U.S. Court of Appeals jurisdiction. Irrespective of the outcome of the Illumina/GRAIL case, the paradigm that Brussels is constructing has the very real potential to be disastrous for American business: if the European Commission is permitted to negate this process in one case, it will set a precedent for future transactions and give foreign governments veto power over U.S. courts and regulatory agencies.

We implore you to utilize your co-chairmanships of the TTC to intervene in the European Court of Justice to ensure that the American sovereignty over American companies is respected, and no remedies are imposed that would effectively circumvent the administrative and judicial processes of the United States.

Thank you for your attention to this matter.

Sincerely,



Bill Hagerty  
United States Senator



John Kennedy  
United States Senator



Thom Tillis  
United States Senator



Todd Young  
United States Senator

